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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: MOP - 203619

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on November 1, 2021, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the La Crosse County Department of Human Services regarding Medical Assistance (MA), a hearing was held on December 14, 2021, by telephone.

The issue for determination is whether the agency correctly determined that petitioner was liable for an overpayment of BadgerCare Plus (BCP) benefits in the amount of \$483.00 for 8/1/16 – 7/31/17, \$250.00 for 8/1/17 – 11/30/17, and \$1,479.00 for 3/1/18 – 7/31/18.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: [REDACTED]  
La Crosse County Department of Human Services  
300 N. 4th Street  
PO Box 4002  
La Crosse, WI 54601

**ADMINISTRATIVE LAW JUDGE:**

Jason M. Grace  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County.

2. On June 5, 2015, petitioner applied for BCP for herself and her minor daughter. Exhibit 2.
3. On June 30, 2015, an Important Information about your Benefits letter was sent to petitioner. It indicated a summary was enclosed of the information she had provided the agency. The attached summary set forth rate of pay of \$12.45, employment of 48 hours per pay period, and that her pay period was bi-weekly. Exhibit 5.
4. On July 9, 2015, an About Your Benefits letter was sent to petitioner. It listed BCP eligibility for the daughter as of June 1, 2015, and as of August 1, 2015 for petitioner. Petitioner was informed that those benefits would continue until there was a change in her case. She was directed to report by the 10<sup>th</sup> day of the next month if her household's monthly income exceeded \$1,327.50. She was also notified that if she failed to do so and received benefits for which she not eligible, she may have to pay back those benefits. Exhibit 4.
5. Petitioner's income exceeded reportable limits in June 2016. She failed to report this information to the agency by July 10, 2016. Her income remained above reportable limits from June 2016 through November 2017 and March 2018 through August 2018. See, Exhibit 9.
6. Petitioner had earned income as follows: \$1,516.30 for 6/2016; \$1,704.50 for 7/2016; \$2,013.92 for 8/2016; \$1,805.78 for 9/2016; \$2,272.70 for 10/2016; \$2,123.60 for 11/2016; \$2,271.92 for 12/2016; \$2,144.04 for 1/2017; \$2,158.04 for 2/2017; \$2,295.97 for 3/2017; \$2,155.73 for 4/2017; \$2,631.876 for 5/2017; \$2,280.77 for 6/2017; \$3,531.80 for 7/2017; \$2,810.44 for 8/2017; \$2,872.95 for 9/2017; \$3,362.77 for 10/2017; \$3,229.95 for 11/2017; \$2,120.00 for 3/2018; \$2,795.00 for 4/2018; \$2,795.00 for 5/2018; \$2,819.00 for 6/2018; and \$2,955.00 for 7/2018. Exhibit 9.
7. On September 16, 2021, the agency issued petitioner three separate notices of MA/BCP Overpayment based on MISREPRESENTATION OF OR FAILURE TO REPORT EARNED INCOME due to CLIENT ERROR. The notices reported overpayment of BCP benefits of \$483.00 for 8/1/16 – 7/31/17, \$250.00 for 8/1/17 – 11/30/17, and \$1,479.00 for 3/1/18 – 7/31/18. Exhibit 1; see also Exhibit 9 for the agency's computations and calculation of the overpayment.
8. Petitioner timely appealed.

### **DISCUSSION**

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have

affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

See also BCP Handbook, Appendix 28.2. BCP overpayments caused by agency error are not recoverable. An overpayment is calculated as follows:

#### **28.4.2 Overpayment Amount**

Use the actual income that was reported or required to be reported in determining if an overpayment has occurred. The amount of recovery may not exceed the amount of the BadgerCare Plus benefits incorrectly provided.

If the case was ineligible for BadgerCare Plus, recover the amount of fee-for-service claims paid by the state and any HMO capitation payments the state paid. Use ForwardHealth interChange data from the Total Benefits Paid by Medicaid Report(s). Deduct any amount paid in premiums for each month in which an overpayment occurred from the overpayment amount.

If the case is still eligible for BadgerCare Plus for the time frame in question but there was an increase in the premium, recover whichever is less of the following:

- The difference between the premiums paid and the premium amount owed
- The amount of claims and any HMO capitation payments the state paid for each month in question

When calculating the overpayment amount for premiums, the overpayment amount is the difference between the premium paid and premium owed, even if the premium that was paid was \$0. Premium adjustments are only made on months where there is an overpayment. If there is a month in which there is no overpayment, then the premium calculation for that month should not be adjusted.

BCP Handbook, 28.4.2.

BCP recipients are required to report if income in a month rises above reportable levels. BCP Handbook, 27.3. The report must be made by the tenth of the next month, and BCP will close the following month if income remains above the limit. Id.

The BCP income eligibility limit for adults is 100% of the federal poverty level (FPL). See Wis. Stat. § 49.471(4)(a) and BCP Handbook §16.1 and 16.9. For an assistance group of two, 100% of the FPL was \$1,327.50 in 2015; \$1,335.00 as of February 2016; \$1,355.33 as of February 2017; and \$1,371.67 as of February 2018. BCP Handbook, 50.1 (Release 15-01, 16-01, 17-01, and 18-01). If a parent's income exceeds program limits, they may qualify for a 12-month earned income extension. See, BCP Handbook, 18.1 and 18.2.1. While in that extension, the parent may be responsible for paying a monthly premium. BCP Handbook, 19.1 – 11.

In this case, the entire overpayment is based solely on BCP benefits provided to petitioner, not her child. If she had timely reported an increase in household income, she would have been placed into a twelve month extension as of August 2016. During that time she would have been responsible for paying a monthly premium. After that period, she would have been ineligible for BCP benefits as her income remained above 100% of the FPL.

At hearing, petitioner did not dispute the agency's findings as to her household income for the period in dispute or that she had failed to report income exceeding reportable limits. She argued that she received a

letter from the agency sometime in 2016 or 2017 requesting proof of income. It was her understanding that BCP would automatically discontinue if she did not provide that information. She did not provide that information to the agency as she had a full-time job and had obtained health insurance through her employer. As she did not provide the requested information, she assumed BCP benefits ended. In support, she provided a letter titled, “Notice of Proof Needed,” dated May 10, 2018. See, Exhibit 13. That letter indicated, “To get or keep BadgerCare Plus benefits, you need to provide proof of items by the due listed below. ... If you do not provide the proof by the due date, benefits will be denied, decreased, or ended.” Id. No similar letter issued prior to 2018 was submitted.

The record indicates that petitioner failed to provide the income information requested in the May 10, 2018, notice. As such, the agency discontinued her BCP benefits at the end of July 2018. I am not able to find in the record evidence of a similar notice being issued in 2016 or 2017 wherein petitioner failed to provide the requested information. Petitioner acknowledged that she never explicitly informed the agency that she wanted her BCP benefits to end. I am unable to attribute agency error for the overpayment based on the record.

Petitioner also appeared to take issue with the fact that the agency had largely relied on income reported by her employer to originally determine if she remained eligible for BCP at that time. The agency representative testified that petitioner was given the option at that time to provide copies of paystubs or have her employer fill out a form that set forth her income. That income was later found to be inaccurate based on paystubs she provided the agency in 2021. That being said, it was petitioner’s responsibility to track her monthly income and report to the agency by the 10<sup>th</sup> day of the following month if it exceeded the amount set forth in her About Your Benefits notice of \$1,327.50. At times, her income was over double that amount. See, Finding of Fact 6.

Finally, petitioner indicated that she had made premium payments that should be applied to the overpayment. According to the BCP Worksheet that set forth the agency’s overpayment calculations, \$893.00 of previously paid premiums were applied to the overpayment. See, Exhibit 9. Petitioner did not provide evidence that amount was incorrect or otherwise dispute the agency’s calculations and computations.

I have no reason to conclude that the failure to report income was anything other than an honest mistake or simple oversight by petitioner. However, the agency is required to recover an overpayment even when the client error was not intentional. I understand that being required to repay the overpayment may create a financial hardship, but I am without authority to base any decision on grounds of equity. It is the longstanding policy of the DHA that its administrative law judges do not possess equitable powers. See, *Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp 540, 545 (E.D. Wis.1977). See also, *Village of Silver Lake, Wis. v. DOR*, 87 Wis. 2d 463 (Wis. App. 1978). DHA must limit its decisions to the law as set forth in statutes and administrative code provisions. Based on the record, I must uphold the agency’s overpayment determination.

### **CONCLUSIONS OF LAW**

The agency correctly determined that petitioner was liable for an overpayment of BadgerCare Plus benefits in the amount of \$483.00 for 8/1/16 – 7/31/17, \$250.00 for 8/1/17 – 11/30/17, and \$1,479.00 for 3/1/18 – 7/31/18.

**THEREFORE, it is**

**ORDERED**

That petitioner’s appeal be dismissed.

## REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5<sup>th</sup> Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

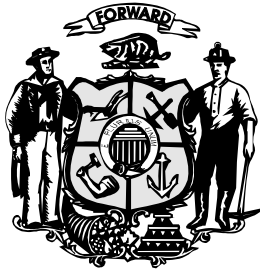
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 14th day of January, 2022

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Jason M. Grace  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on January 14, 2022.

La Crosse County Department of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability